

Ralph Lester, Appellant.

*Henry Foxcroft and Isaac Foxcroft }
Infants, by Francis Nicholson, Esq; } Respondents.
their Guardian, and others,*

The RESPONDENT's Case.

*Note, Henry the Eldest Son, was otherwise sufficiently provided for by a far greater Estate.
August 30. 1698.*

*September 15. 1698 Mr. Foxcroft died.
Hill. Term 1698. Bill Exhibited.*

In March 1694. the agreement is pretended to be made.

From Michaelmas 1695. the Lease to commence.

Isaac Foxcroft Esq; Deceased, late Father of the said *Henry* and *Isaac Foxcroft*, being seised in Fee of part, and Possessed for a long Term of Years of other part of *Weldhouse*, and Premises thereto belonging, Scituate and Being, in the Parish of *St. Giles* in the Fields, in the County of *Middlesex*; by his Will, Dated as in the Margent, devised the same, both real and Leasehold, to *Isaac* his Second Son (then and yet a Minor) and his Heirs. And thereby appointed *Francis Nicholson* Esq; his Guardian, with power to set and lett, and receive the Rents during such Minority, but to be Accountable to the said *Isaac* at his full Age of Twenty One Years.

Afterwards on the 15th of *September* then next following, the said Mr. *Foxcroft*, the Father, Dyed; and in *Hillary-Term* next after his Death, the Appellant Exhibited his Bill in Chancery against these Respondents; and *Elizabeth Foxcroft*, Eldest Daughter and Executrix of the Testator, and *Residuary Legatee*. Thereby setting forth, and pretending that the Testator in his Life Time (*viz.*) in or about the Month of *March*, 1694. had made with him a Parole Agreement for pulling down some part of the Houses then standing upon the said Premises, and for Building Fourteen or more new Houses in place thereof, which he had done accordingly, and near Finished the same, as he pretended, at his own charge; and wherein he had Expended, as he also pretended, about 2000 l. of his own proper Money; and a further considerable Sum which he borrowed (upon his Bonds or Notes) of the Testator, who by the said Agreement, as the said Appellant by his said Bill pretended, was to make the Appellant a Lease of the same from *Michaelmas*, 1695. for 99 Years, at a Pepper Corn Rent for the first Year, and 150 l. *per Annum* afterwards, during the Residue of the said Term. And thereby also further suggested, that soon after the making such Will, the said Testator gave some Directions for the drawing and preparing such Lease; and that a Lease was drawn accordingly, but that the Testator was prevented from Executing the same by the Respondents, as he thereby pretended, or by some other means. And therefore prayed the same Agreement for such Lease might oblige the Devisee; and that he and his Guardian might be compelled to fulfill and Execute the same.

To which Allegations the Respondents answered, That they knew not that the Appellant was any ways concerned in the pulling down and rebuilding of the Premises, otherwise than as Agent or Servant for the Testator; at whose proper Charge and Expence the same was done. Nor that any agreement for such pretended Lease of the Premises was ever made by the Testator to the Appellant, for the Reasons following.

First, For that the Appellant was greatly indebted to the Testator, before any Building was begun, and in such Condition, that the Testator knew no other way to obtain his Debt, but by Employing him in work; and it was very improbable the Testator should Lend him a further Considerable Sum for the chiefest profit of the Appellant, upon such a slender security of the Testator's own Estate, and should grant him so long a Term of Years at so mean a Rent reserved, when the Sum disbursed was so very considerable, amounting to near 10000 l.

Secondly, The Testator being of perfect Understanding at the time of making his Will, it was not likely (if any such Agreement had been made) but that he would have taken some Notice thereof in his said Will, so lately made before his Death.

Thirdly, It cannot be reasonably imagined (if such Agreement had been made, as is pretended) that the Appellant would have neglected the requiring a performance thereof for near three years and a half, after such pretended making of the same; and untill so near an approach of the Testators Death, and in the time of his Sickness, as no otherwise appears.

Fourthly, Nothing of such pretended Agreement being in Writing, and signed by either of the Parties concerned therein, The Statute made for preventing Frauds and Perjuries hath sufficiently provided, so as the Appellants Pretences (if true) can no wayes affect the Premises in question, as these Respondents are advised, and do humbly conceive.

Note, 3 of the Appellants Witnesses, viz. Lady Jane Kniverton, Jude Athersch, and Jane Davison are considerable Legatees by the Testators Will, whose Evidence tends to enlarge the Personal Estate for their own advantage, as this pretended Agreement, if Executed, greatly will; and therefore their Testimony is less to be credited.

Note, Also it is the same Interest of the Executrix who is the Residuary Legatee and is in favour of the Appellant the better to enable him to pay her what he oweth to the Personal Estate of the Testator.

All which Matters, together with the Appellants Proofs, coming under Consideration, at the hearing of this Cause, before the Right Honourable the Lord Keeper of the great Seal of *England*, the Sixth Day of *March* last; his Lordship Ordered, that the Appellants Bill should stand dismissed; from which decretal Order, the Appellant hath Appealed to your Lordships.

And the Respondents humbly hope this Appeal will be dismissed with exemplary Costs.

John Clapham.